no difference in principle between such a case and the others above cited: *Mutual Nat'l Bank* v. *Rotgé*, 28 La. An. 933.

The check circulates as the representative of so much cash in bank, payable on demand to the holder, with the drawer as surety. In this respect there is little difference between the two classes of certified check, each kind being in effect promissory notes of the bank and with this fact giving them currency. But the check upon which the drawer remains liable is better security than the one for liability upon which he is discharged, as it has his promise to pay in addition to that of the bank. This liability of the drawer, however, might not continue long enough to enable the check to circulate as money to any great extent; for if the holder be guilty of laches, by which the drawer is made to suffer, he cannot recover of him, the rule in such cases being the same as though the check were uncertified.

For any other questions that may arise in connection with certified checks it is believed the rules applicable to bills of exchange and uncertified checks will furnish easy solutions.

W. H. BRYANT.

Denver, Col.

RECENT AMERICAN DECISIONS.

Supreme Court of Pennsylvania.

ROMMEL *v.* SCHAMBACHER.

The proprietor of an inn or tavern is responsible for a personal injury done to a guest by another guest who had been suffered by the proprietor to remain on the premises in a state of intoxication.

Error to the Court of Common Pleas, No. 4, of Philadelphia county.

The facts sufficiently appear in the opinion.

Henry D. Wireman, for plaintiff in error.

Charles H. Downing, for defendant in error.

The opinion of the court was delivered by

GORDON, C. J.—From the evidence in this case we gather the following facts: On the evening of the 9th of August, 1884, the plaintiff, William Rommel, a minor, entered the tavern of

the defendant, Jacob Schambacher, and there found one Edward Flanagan. They both became intoxicated on liquor furnished them by Schambacher. While the plaintiff was standing on the outside of the bar, engaged in conversation with the defendant, who was in the inside thereof, Flanagan pinned a piece of paper to Rommel's back and set it on fire. The consequence was that Rommel's clothes were soon in flames, and before they could be extinguished he was very badly injured. He brought the present suit to recover damages from the defendant for the injury thus sustained. The court below adjudged the facts as stated above to be insufficient to sustain the plaintiff's case, and directed a nonsuit. In this we think it made a mistake. There is no doubt that the defendant, from the position he occupied, had a full view of the room outside of the bar, and did see, or might have seen, all that was going on in it. If, in fact, he did see Flanagan setting fire to the plaintiff, and did not interfere to protect his guest from so flagrant an outrage, his responsibility for the consequences is undoubted. If, on the other hand, he was guilty of making Flanagan drunk, or if he came there drunk, and Schambacher knew that fact, he was bound to see that he did no injury to his customers. All this is a plain matter of common law and good sense, and does not depend on the Act of 1854, or any other statute. Where one enters a saloon or tavern, opened for the entertainment of the public, the proprietor is bound to see that he is properly protected from the assaults or insults, as well as of those who are in his employ, as of the drunken and vicious men whom he may choose to harbor. To illustrate the principle here stated we need go no farther than the case of *The Pittsburgh and Connellsville Railroad Company* v. *Pillow*, 76 Pa. St. R. 510.

In the case cited, a drunken row occurred on board one of defendants' cars, and during the quarrel a bottle was broken and a piece of the glass struck the plaintiff, a peaceful passenger, in the eye and put it out; held that the company was responsible for the injury thus done. "The plaintiff lost his eye through the quarrel of a couple of drunken men, who should not have been permitted aboard the cars, or if so permitted, should have been so guarded or separated from the

sober and orderly part of the passengers that no injury could have resulted from their brawls." If, then, a railroad company is liable for the conduct of drunken men who may chance to board its cars, much more the tavern-keeper, who not only permits drunken men about his premises, but furnishes liquor to make them drunk, and who is thus instrumental in fitting them for the accomplishment of such an insane and brutal trick as that disclosed by the evidence of the case in hand.

The judgment of the court below is now reversed and a new *venire* ordered.

The above decision, so far as we have been able to ascertain, is the first in which the responsibility of an innkeeper has been held to extend to the protection of the person of his guest from the violence of other guests; and such being the case, it is of more than ordinary interest.

The liability of an innkeeper to a guest for damage done to his property, when within the protection of the innkeeper's house, has been recognized and well established from the earliest times of the common law, see *Calye's Case*, 8 Co. 33 *b;* and that liability exist in case of theft or damage to property, whether the injury proceed from the innkeeper or his servants or from another guest, is so well known that it is not necessary to multiply authority, it is sufficient to refer to the cases of *Houser* v. *Tully*, 62 Pa. St. 94; *Walsh* v. *Porterfield*, 87 Pa. St. 376; *Mason* v. *Thompson*, 9 Pick. 280; *Sibley* v. *Aldrich*, 33 N. H. 553; *Shaw* v. *Berry*, 31 Me. 478. With regard, however, to *personal* injuries, the law has been held differently, and a reference to the few cases in which the matter has been considered, may not be unprofitable. In *Calye's Case*, 8 Co. 33 *b*, the court, after citing the words of the writ given against an innkeeper, as follows: *Cum secundum legem et consuetudinem regni nostri Angliæ hospitatores qui hospitia commune tenent ad hospitandos homines per partes ubi hujus modi hospitia existunt transeuntes et in eisdem hospitantes eorum bona et catalla infra hospitia illa existentia absque subtractione seu àmissione custodire die et nocti tenentur ita quod pro defectu hujus modi hospitatorum seu servitum suorum hospitibus hujus modi damnum non eveniat*, said, "The words are *hospitibus damnum non eveniat.* These words are general, and yet, forasmuch as they depend on the preceding words, they will produce effects. (1.) They illustrate the first words. (2.) They are restrained by them, for the first words are *eorum bona et catalla infra hospitia illa existentia absque subtractione custodiæ.* These words *bona et catalla*, restrain the latter words to extend only to movables, and therefore by the latter words, if the guest be beaten in the inn, the innkeeper shall not answer for it, for the injury ought to be to his movables which he brings with him, and by the words of the writ, the innholder ought to keep the goods and chattels of his guest and not his person, and yet in case of battery *hospiti damnum eveniat*, but that is restrained by the former words, as hath been said," and this, we are told, was resolved *per totam curiam.*

The next case in which the question of the principal decision was even remotely involved or alluded to is *Newton* v. *Trigg*, 1 Show. 268 (Anno 3 William and Mary) in which there is reported a dictum of EYRES, J., in the course of the enumeration of the duties of an innkeeper, to the effect that an innkeeper is bound to "keep the assize and to prevent tippling," and we do not find the question of liability for personal injuries raised again until 1878, in *Sandys* v. *Florence*, 47 L. J. C. P. 598, in which case it was alleged that through the negligence of the defendant, an innkeeper, the plaintiff, a guest in his hotel, was injured through the fall of a ceiling. The defendant demurred, and his counsel took the broad ground that there was no liability for injuries to the person of the guest, citing *Calye's Case*. LINDLEY, J., however, held that it was the duty of the defendant to protect any one coming on his premises by his invitation, either expressed or implied, from such dangers as he knew, or ought to have known of, and added, "it was the duty of the defendant, who was an hotel keeper, to take reasonable care of the persons of his guests, so that they should not be injured by anything happening to them through his negligence while they are his guests."

In this country, in *Gilbert* v. *Hoffman*, 66 Iowa 208, an innkeeper who knew that small-pox was prevalent in his house was held liable to a guest who there contracted the disease, REED, J., saying, "By keeping their hotel open for business, they, in effect, represented to all travelers that it was a reasonably safe place at which to stop." The question of non-liability for personal injuries does not seem to have been raised in the case, and the defense seems to have been rested mainly upon contributory negligence, which position was overruled.

These are, we believe, all the cases, bearing upon the matter under consideration, which have been reported. None of them, it will be seen, give direct support to the principal case, *Calye's Case* is directly against it, and in none of them has the innkeeper been held liable for an injury arising from the voluntary act of a guest. It is true that in *Gilbert* v. *Hoffman*, the injury came through a guest, but the injury was an involuntary communication of disease. In *Sandys* v. *Florence*, the innkeeper was held liable for personal injury arising from the negligent keeping of his house in a *material* respect; and the *dictum* in Shower could only support the case if the action of Flanagan in pinning and burning the piece of paper were the direct result of tippling or drunkenness as distinguished from wanton practical joking. Yet, notwithstanding the want of direct authority for holding an innkeeper, as such, liable for personal injury wrought by one guest upon another, the decision of the principal case, we think, commends itself to the sound and legal judgment as eminently proper and just. When a man keeps open house, and invites persons to come in for the purpose of his business, he must be taken to promise protection against such injuries or risks as the character of the business he is conducting would naturally suggest to him might be expected where due care is not taken to guard against their occurrence, and to insure to the person entering a safe egress. On this principle it is that the keeper of a warehouse is held liable should one coming upon his premises to transact business with him fall through an open hatchway, or trap, without contributing to the accident by his own negligence. Now

the keeper of a tavern knows that persons are liable to become intoxicated upon his premises; he knows, further, that idle men collected together, whether drunk or not, are apt to indulge in skylarking, and it is therefore incumbent upon him to see that his guest has reasonable protection against the tricks, drunken or otherwise, of his fellow guests, and the duty would, it should seem, be all the more binding upon him when the condition of the guest is such that he is unable to protect himself. Furthermore, it is to be remembered that the innkeeper has the power and authority to protect his guests; he is not bound to suffer persons who misbehave to remain on the premises: *Commonwealth* v. *Mitchell*, 2 Pars. 431. He has the right to eject them, and to call on the assistance of the police if unable to accomplish the ejection single handed. If, then, an innkeeper invite persons to come on his premises and make no effort to protect them against injuries from other guests of a character consonant with the risks ordinarily run from the assemblage together of idle or intoxicated persons, he cannot complain if he be held liable. If he make no attempt to protect his guest, he cannot rely on the defense of *vis major*, such as in some cases is an answer to an action for the loss or spoliation of the goods of a guest.

We have considered this case solely as resting on the liability of an innkeeper, and we think that the court did right in construing that liability so as to include the present case. Of course, if the act of injury were the result of intoxication contracted on the premises of the defendant, or there aggravated by liquor sold by him, he would then be liable under the (Pa.) Act of May 8, 1854, Pur. Dig. (ed. 1883) 1082, which resembles what are known as the civil damage acts of other States, and renders the furnisher of liquor in violation of law to a minor or an intoxicated person civilly responsible for any injury to person or property consequent upon such furnishing.

HENRY BUDD.

Supreme Court of Illinois. November 9, 1887.

THE GREAT WESTERN TELEGRAPH COMPANY, FOR THE USE OF ELIAS R. BOWEN, RECEIVER, *v.* F. D. GRAY.

The Great Western Telegraph Company was organized in 1867, under an Illinois Act of 1849. In 1874 a court of equity appointed a receiver of the company. In 1886 the same court made an assessment upon the subscribers to the stock of the company to enable the receiver to pay its creditors. The receiver then brought *assumpsit* against one Gray, a subscriber, to recover of him the amount assessed by the court. Gray's contract of subscription was as follows:

"Capital, $3,000,000. Shares, $25. Assessments not to exceed $10 on a share.

"Subscription List for the Capital Stock

of the

"Great Western Telegraph Company.